

<sup>1</sup> 5 U.S.C. §§ 8101-8193.

his employment in July 1998. Appellant has a history of nonwork-related knee conditions and surgeries, which predate this claim. He has worked with restrictions since July 1998. OWCP accepted the claim for aggravation of bilateral patella malalignment. Medical and wage-loss compensation benefits were authorized.

On July 7, 2006 appellant filed a Form CA-7 claim for a schedule award. In an August 8, 2006 report, Dr. Peter R. Ricci, a Board-certified orthopedic surgeon, opined that appellant had 25 percent permanent impairment due to continued pain in his knees. Following appropriate development, OWCP denied the claim by decision dated September 14, 2007 on the grounds Dr. Ricci's report failed to provide the necessary information upon which to base a permanent partial impairment rating.

On November 20, 2009 appellant filed another claim for a schedule award. In a November 27, 2009 report, Dr. William N. Grant, a Board-certified internist and second opinion examiner, opined under the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) that appellant had 36 percent left lower extremity impairment and 36 percent right lower extremity impairment.

Following questions raised by its medical adviser regarding Dr. Grant's report, OWCP directed appellant to a second opinion examination with Dr. Manhal A. Ghanma, a Board-certified orthopedic surgeon, to resolve the question of entitlement to a schedule award due to residuals of the work-related injury. In a June 1, 2010 report, Dr. Ghanma opined that appellant reached maximum medical improvement on July 21, 1998. He concluded that based solely on the allowed conditions of aggravation of bilateral knees of bilateral patellar malalignment, no additional treatment was necessary and there were no permanent disabling injury residuals. Thus, Dr. Ghanma opined that appellant had zero percent impairment to his lower extremities.

On July 13, 2010 an OWCP medical adviser concluded that the medical evidence did not support a measurable permanent impairment to a scheduled member.

By decision dated September 17, 2010, OWCP denied appellant's claim for a schedule award.

By letter dated September 23, 2010, appellant's attorney requested an oral hearing and submitted additional reports from Dr. Grant dated September 8 and October 20, 2010 on the issue of appellant's bilateral lower extremity impairment.<sup>2</sup> OWCP subsequently determined that a conflict in medical evidence existed between Dr. Grant and Dr. Ghanma over whether appellant had continuing residuals of a work-related condition and whether there was any permanent impairment due to the work injury. By decision dated January 7, 2011, OWCP's hearing representative vacated OWCP's decision dated September 17, 2010 and remanded the case for OWCP to prepare a statement of accepted facts and refer appellant and the case record to an appropriate Board-certified specialist for an impartial medical examination.

---

<sup>2</sup> In his September 8 and October 20, 2010 reports, Dr. Grant opined that appellant reached maximum medical improvement and has 59 percent impairment based on Table 16-23, page 549 of A.M.A., *Guides*.

In a February 20, 2011 report, Dr. Kenneth W. Chapman, a Board-certified orthopedic surgeon selected as the impartial medical specialist, noted his review of the statement of accepted facts and the record and set forth examination findings. He noted that his physical examination findings coincided more with the examination of Dr. Ghanma than that of Dr. Grant. Dr. Chapman stated that his examination findings did not reveal large synovial changes or a flexion contracture of 10 degrees and 60 degrees flexion in either knee as reported by Dr. Grant. Rather, he opined that, while appellant walked with a cane and had a somewhat unsteady gait, it was secondary to the osteoarthritis in his knees, which were unrelated to the allowed condition of bilateral patella malalignment. Dr. Chapman opined that appellant did not suffer from any residuals from the accepted work condition of July 21, 1998 and the degenerative arthritis of his knees was unrelated to a malalignment of his patella tendon, which he noted was not found on examination. He stated that, while he did not know how the diagnosis of bilateral patella malalignment was arrived, he could not say when it ceased or resolved. Dr. Chapman explained that for appellant to injure his knee as described, be sent home from the hospital and return to work in two to three days it was unlikely that appellant had sustained a significant patellofemoral malalignment or dislocation. He further opined that appellant did not have any significant residual from the injury. Dr. Chapman stated that appellant's problems with his knees at the present time were related to degenerative arthritis. He stated that the degenerative arthritis would not cease or resolve until he has surgery, which was indicated for a knee replacement as opposed to arthroscopic debridement. Dr. Chapman stated, however, that further imagining studies of appellant's knees would be needed for a surgical decision and any surgery would be unrelated to appellant's July 21, 1998 work injury.

Dr. Chapman opined that, while appellant has no residuals from his bilateral patella malalignment, he did not believe that he was capable of performing a mailhandler position on an unrestricted basis because of the severe degenerative arthritis of the knees. He stated that while appellant could perform the position he was doing with the forklift, apparently that work was no longer available and that was the reason appellant was laid off. Dr. Chapman further explained that while he would return appellant to work with no restrictions with regard to the allowed injury, he would not be able to return to work required for a postal worker because of the degenerative arthritis of his knees, which was unrelated to the July 21, 1998 work injury. With regard to the accepted aggravation, he stated that he suspected the aggravation ceased a very short time after appellant returned to work after the initial injury on July 21, 1998, which Dr. Ghanma also indicated. Dr. Chapman stated that this was not a permanent problem and appellant reached maximum medical improvement approximately three months after his July 21, 1998 work injury. He stated that appellant's problem with his knees was related to degenerative arthritis, which was unrelated to the July 21, 1998 work injury. Dr. Chapman stated that there was no recommendation for future medical care or treatment for the allowed condition as it had resolved. He also noted that while appellant had a decrease in range of motion of his left knee and full range of motion of the right knee, the decrease in range of motion of the left knee was not related to his allowed condition, so he had zero percent impairment for both of his knees secondary to the allowed condition from the July 21, 1998 work injury. Thus, Dr. Chapman opined under the sixth edition of the A.M.A., *Guides* that appellant had zero percent impairment for both knees from the allowed condition from the July 21, 1998 work injury.

By decision dated September 8, 2011, OWCP denied appellant's claim for a schedule award. Determinative weight was accorded to Dr. Chapman's impartial medical report.

By decision dated September 12, 2011, OWCP terminated appellant's wage-loss and medical benefits effective September 13, 2011.<sup>3</sup>

On September 13, 2011 appellant, through counsel, disagreed with OWCP's September 8, 2011 decision and requested a telephonic hearing, which was held on December 15, 2011.

In a December 22, 2011 report, Dr. John L. Dunne, an osteopath, provided a history of the injury, reviewed medical records and provided findings on examination. Under the sixth edition of the A.M.A., *Guides*, Dr. Dunne set forth his calculations and opined that appellant had seven percent impairment of the left and right lower extremities for a dislocated left patella, closed and malaligned bilateral knee. Examination of the right knee revealed no edema or effusion, normal skin markings and no discomfort of the medial or lateral joint line upon palpation. Range of motion was zero degrees full extension and 100 degrees of flexion with complaints of patellar anterior knee pain. Examination of the left knee and lower extremity revealed zero degrees of extension and 100 degrees of flexion with significant palpable and audible crepitus on multiple trials, no atrophy of the quadriceps or calf muscle, no effusion, no tenderness to palpation and complaints of anterior knee pain on patellar compression maneuver. Under Table 16-3, Dr. Dunne found class 1 impairment for patellar subluxation or dislocation. He found that appellant had grade modifier 2 for functional history under Table 16-6; grade modifier 1 for physical examination; and no grade modifiers for clinical studies. Dr. Dunne utilized the net adjustment formula and found a zero net adjustment. He opined that class 1 impairment for an assessment of patellar subluxation or dislocation with a zero net adjustment equaled seven percent impairment of the left and right lower extremities.

By decision dated February 29, 2012, an OWCP hearing representative found that further development of the case file was warranted based on Dr. Dunne's December 22, 2011 report and set aside the September 8, 2011 decision. The case was remanded for referral of the case record and a current statement of accepted facts to OWCP's medical adviser to review.

OWCP issued an updated statement of accepted facts on March 12, 2012 and referred the case record to its medical adviser for a determination as to whether appellant had permanent impairment to the lower extremity as a result of the accepted work injury. In a March 29, 2012 report, an OWCP medical adviser agreed with Dr. Dunne's calculation under the A.M.A., *Guides* that there was seven percent impairment to both the left and right lower extremities.

On May 1, 2012 OWCP requested clarification from its medical adviser as to the entitlement to a schedule award. It noted the claim was found to have no residuals of the accepted conditions and zero percent impairment to the bilateral lower extremities in February 2011.

In a May 17, 2012 report, the medical adviser concluded that, after a review of the records, appellant's condition had not changed. He stated that the impairment rating provided by Dr. Dunne was his own opinion and that he only reviewed medical reports to determine if the

---

<sup>3</sup> By decision dated April 12, 2012, an OWCP hearing representative affirmed OWCP's September 12, 2011 decision that appellant no longer had residuals of his employment injuries.

A.M.A., *Guides* are correctly applied. The medical adviser suggested that OWCP request clarification from Dr. Dunne.

In a November 28, 2012 letter, OWCP requested that Dr. Dunne clarify what changed in appellant's condition between February and December 2011 and whether the impairment rating was based on the accepted work-related condition or preexisting conditions.

In a December 6, 2012 report, Dr. Dunne noted the fact that appellant was hired at the employing establishment with preexisting osteoarthritis of both knees and described the work injury as being struck in the knee caps by a heavy lid which knocked appellant to the floor. He indicated that after the work injury, appellant returned to work in a limited-duty position and his bilateral knee pain never allowed him to return to full mailhandler capacity. Based on his examination findings, Dr. Dunne opined that appellant had seven percent impairment to the left and right lower extremities. He stated that appellant's history and physical examination documented a permanent degree of impairment from the time appellant was hired at the employing establishment. Dr. Dunne also noted his agreement with Dr. Chapman that the allowed conditions of the claim do not reflect the current findings of impairment but are more consistent with a degenerative arthritis of both knees that were not directly caused by the work injury.

By decision dated December 28, 2012, OWCP denied appellant's claim for a schedule award as no entitlement was found.

In a January 3, 2013 letter, appellant's counsel requested a telephonic hearing, which was held on April 15, 2013. In a January 31, 2013 report, Dr. Dunne stated that there is no dispute that appellant suffered injuries to the bilateral knees on July 21, 1998 and subsequently developed chronic bilateral knee pain and an inability to regain full function and restoration to his usual job duties. He opined that the work incident in 1998 was the direct cause of appellant's bilateral knee impairment. Dr. Dunne indicated that he did not know how the patellar dislocation came about but appellant had demonstrated patella femoral joint pain on examination. He stated that, while appellant no longer suffers from bilateral patellar dislocations, he now has significant impairment and moderate disability directly arising from the incident of this claim and the facts of the case support a diagnosis of a substantial aggravation of a relatively asymptomatic or much less symptomatic bilateral knee condition that deteriorated to the degree of impairment he originally assessed.

By decision dated July 3, 2013, an OWCP hearing representative affirmed the December 28, 2012 denial of the schedule award claim.

### **LEGAL PRECEDENT**

The schedule award provision of FECA<sup>4</sup> and its implementing regulations<sup>5</sup> set forth the number of weeks of compensation payable to employees sustaining permanent impairment from

---

<sup>4</sup> 5 U.S.C. § 8107.

<sup>5</sup> 20 C.F.R. § 10.404. Effective May 1, 2009, OWCP began using the A.M.A., *Guides* (6<sup>th</sup> ed. 2009).

loss or loss of use, of scheduled members or functions of the body. However, FECA does not specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. The A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.<sup>6</sup> The claimant has the burden of proving that the condition for which a schedule award is sought is causally related to his or her employment.<sup>7</sup>

In addressing lower extremity impairments, due to peripheral or spinal nerve root involvement, the sixth edition requires identifying the impairment class for the diagnosed condition (CDX), which is then adjusted by grade modifiers based on Functional History (GMFH) and if electrodiagnostic testing were done, Clinical Studies (GMCS).<sup>8</sup> The net adjustment formula is (GMFH - CDX) + (GMCS - CDX).<sup>9</sup>

When there are opposing reports of virtually equal weight and rationale, the case will be referred to an impartial medical specialist pursuant to section 8123(a) of FECA, which provides that, if there is disagreement between the physician making the examination for the United States and the physician of the employing establishment, the Secretary shall appoint a third physician who shall make an examination and resolve the conflict of medical evidence.<sup>10</sup> This is called a referee examination and OWCP will select a physician who is qualified in the appropriate specialty and who has no prior connection with the case.<sup>11</sup>

### ANALYSIS

OWCP accepted the condition of aggravation of bilateral patella malalignment. Appellant requested a schedule award. Due to a conflict in medical opinion between Dr. Grant, appellant's attending physician, and Dr. Ghanma, an OWCP referral physician, regarding permanent impairment, OWCP referred appellant to Dr. Chapman for an impartial medical opinion, to resolve the conflict in medical opinion, pursuant to 5 U.S.C. § 8123(a).

In his February 20, 2011 report, Dr. Chapman reviewed the medical record along with a statement of accepted facts and presented examination findings. He stated that he did not know how the evaluation of bilateral patella malalignment was arrived, but opined it was unlikely that appellant had sustained a significant patellofemoral malalignment or dislocation, as he was sent home from the hospital and returned to work in two to three days. Dr. Chapman opined that appellant had reached maximum medical improvement three months after the July 21, 1998 work

---

<sup>6</sup> *Id.*

<sup>7</sup> *Veronica Williams*, 56 ECAB 367, 370 (2005).

<sup>8</sup> A.M.A., *Guides* 533.

<sup>9</sup> *Id.* at 521.

<sup>10</sup> 5 U.S.C. § 8123; *M.S.*, 58 ECAB 328 (2007); *B.C.*, 58 ECAB 111 (2006).

<sup>11</sup> *R.C.*, 58 ECAB 238 (2006).

injury and that no residuals from the bilateral patella malalignment remained. He opined that appellant had no impairment under the sixth edition of the A.M.A., *Guides* for any of the extremities as the allowed condition had resolved. Thus, Dr. Chapman opined that appellant had zero percent impairment for the extremities due to the accepted conditions. He explained that appellant's problems with his knees were related to degenerative arthritis which was unrelated to the July 21, 1998 work injury and which disabled him from returning to his postal work.

In situations where there are opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual background, must be given special weight.<sup>12</sup> The Board finds that Dr. Chapman, the impartial medical examiner, properly found that there was no impairment under the A.M.A., *Guides* as the accepted condition had resolved. Dr. Chapman attributed appellant's current condition and impairment to degenerative arthritis, which was unrelated to the July 21, 1998 work injury. His report was sufficiently detailed and well reasoned to resolve the conflict of medical opinion evidence and establish that appellant had no permanent impairment for schedule award purposes. The Board finds that Dr. Chapman's report is entitled to the special weight of the medical evidence, afforded an impartial medical examiner, with regard to appellant's employment-related permanent impairment.

In a December 22, 2011 report, Dr. Dunne opined that appellant had seven percent impairment for the left and right lower extremities. While an OWCP medical adviser agreed with Dr. Dunne's impairment calculation, OWCP requested clarification from Dr. Dunne as to whether the impairment to appellant's lower extremities were the result of the accepted work injury or preexisting conditions. In his December 6, 2012 report, Dr. Dunne opined that, while appellant has a permanent impairment to the bilateral lower extremities, he agreed with Dr. Chapman that the current findings of impairment was more consistent with a degenerative arthritis of both knees that were not directly caused by the work injury. However, in his January 31, 2013 report, he changed his opinion to find that the work incident in 1998 substantially aggravated a relatively asymptomatic or much less symptomatic bilateral knee condition and was the direct cause of appellant's bilateral knee impairment. However Dr. Dunne opined that appellant no longer suffered from bilateral patellar dislocation, the accepted condition and appears to relate his impairment to his preexisting condition. His report does not support an impairment as a result of the accepted employment injury. Medical reports without adequate rationale on causal relationship are of diminished probative value and do not meet appellant's burden of proof.<sup>13</sup> Thus, Dr. Dunne's January 31, 2013 report is of diminished probative value and insufficient to overcome the weight accorded Dr. Chapman as the impartial medical examiner or to create a new conflict.<sup>14</sup>

---

<sup>12</sup> *Anna M. Delaney*, 53 ECAB 384 (2002); *Nathan L. Harrell*, 41 ECAB 401, 407 (1990).

<sup>13</sup> *Ceferino L. Gonzales*, 32 ECAB 1591 (1981).

<sup>14</sup> *Jaja K. Asaramo*, 55 ECAB 200, 205 (2004).

On appeal, counsel contended that OWCP's decision was contrary to fact and law. The Board finds that appellant did not submit sufficient medical evidence to establish that residuals of the accepted condition remained which caused an impairment under the A.M.A., *Guides*.

Appellant may request a schedule award based on evidence of a new exposure or medical evidence showing progression of an employment-related condition resulting in permanent impairment or increased impairment.

### **CONCLUSION**

The Board finds that appellant has failed to establish that he has a ratable impairment of the bilateral lower extremities causally related to his work injuries.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the July 3, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 24, 2014  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge  
Employees' Compensation Appeals Board